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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11855 OF 2018

Nivrutti D. Ghogare & Ors. ...Petitioners
V/s.

Maharashtra Industrial Development
Corporation, Mumbai & Ors. ...Respondents

WITH
WRIT PETITION NO.10492 OF 2022

Tukaram G. Ghogare & Ors. ...Petitioners
V/s.

Maharashtra Industrial Development
Corporation, Mumbai & Ors. ...Respondents

WITH
WRIT PETITION NO.10491 OF 2022

Maruti N. Ghogare & Ors. ...Petitioners
V/s.

Maharashtra Industrial Development
Corporation, Mumbai & Ors. ...Respondents

WITH
INTERIM APPLICATION NO.20476 OF 2022
IN
WRIT PETITION NO.10491 OF 2022

Maruti N. Ghogare & Ors. ...Applicants

IN THE MATTER BETWEEN :

Maruti N. Ghogare & Ors. ...Petitioners
V/s.

Maharashtra Industrial Development
Corporation, Mumbai & Ors. ...Respondents

WITH

WRIT PETITION NO.10495 OF 2022

Balu B. Ghogare & Ors.

...Petitioners

V/s.

Maharashtra Industrial Development
Corporation, Mumbai & Ors.

...Respondents

Mr.T.D. Deshmukh for the Petitioners in all the Writ Petitions.

Mr.Kunal Damle with Ms.Sangeeta Narayanan i/b Jay & Co. for MIDC
– Respondent No.1 in all the Writ Petitions.

Mr.A.I. Patel, Addl. G.P. with Mr.A.R. Kanarse, G.P. for the State –
Respondent.

CORAM : R.D. DHANUKA &
M.M. SATHAYE , JJ.
DATE : 16TH JANUARY, 2023.

ORAL JUDGMENT (Per R.D. Dhanuka, J.) :-

1. Rule. Mr.Damle, learned counsel for MIDC – Respondent no.1 waives service. Mr.Patel, Addl.G.P. for the State – Respondent nos.2 to 4 waives service. Rule is made returnable forthwith. The matters are heard finally at the admission stage by the consent of parties.

2. By these petitions filed under Article 226 of the Constitution of India, the Petitioners have impugned the land acquisition proceedings initiated under the provisions of the Maharashtra Industrial Development Act (for short “MID Act”) with respect to Survey No.150, Hissa No.3, situated at Village Mann, Taluka Mulshi, District Pune.

3. The Petitioners owned various plots, including the plot bearing No.150, Hissa No.3. On 30th September, 2001 and 6th August, 2004, notices under Section 32(2) and the notification under Section 32(1) of the said MID Act respectively came to be issued in respect of various lands, including the writ property. It is the case of the Petitioners that the writ property, however was deleted in the agreement entered into between the Petitioners and Maharashtra Industrial Development Corporation (MIDC). Compensation was awarded in respect of the said four plots.

4. Learned counsel for the Petitioners invited our attention to the order under Section 33(2) and 36(1) of the MID Act and more particularly page 90 of the Petition stating that the agreement in respect of the writ property is shown as blank in paragraph (v) of the said award. He submitted that since the writ property was deleted from the agreement entered into between the parties, the State Government could not have made an award under Section 33(2) read with Section 36(1) of the MID Act. He also placed reliance on the acquisition certificate issued on 30th January, 2019 in respect of various land acquired. Land bearing Survey No.150(3) is not mentioned in the said certificate.

5. Mr.Deshmukh, urged that though the said land was acquired, no compensation was given to the Petitioners and thus

compensation was required to be determined under Section 33(3) of the MID Act. He submitted that instead of following said appropriate proceedings, an award came to be made under Section 32(1) read with Section 36 of the MID Act.

6. Learned counsel submitted that the impugned award insofar as writ property is concerned, thus shall be quashed and set aside.

7. Mr. Patel, learned Additional Government Pleader for the State tendered a certified copy of the Agreement dated 27th November, 2004 entered into between the Petitioners as one of the co-owner and the MIDC. Learned Addl. G.P. also invited our attention to the affidavit in reply filed by the MIDC and more particularly paragraphs (d), (e) and (f) of the said affidavit. He submitted that the said affidavit filed by MIDC clearly indicates that there was agreement with the Petitioner No.1 in respect of the subject land which was executed on 27th November, 2004. He submitted that according to the said affidavit, the objection raised by the Petitioners in respect of the writ property was rejected by the Government of Maharashtra and after consideration of objections of the owners of other land, vide letter dated 2nd August, 2004, the same land was released from the acquisition process. He submitted that since the procedure was followed under the provisions of MID Act, no

interference is warranted.

8. Learned counsel for MIDC relied upon the averments made in the affidavit in reply filed by MIDC. He submitted that since the dispute is regarding compensation, if the Petitioners are aggrieved by the compensation awarded in the impugned award, the remedy of the Petitioners would be to apply for enhancement of compensation.

9. A perusal of the award indicates that the notice was issued under Section 32(2) and the notification under Section 32(1) of the MID Act in respect of the writ property on 13th September, 2001 and 6th August, 2001 respectively. In paragraph (V) of the said award, it is provided that the owners have given Kararpatra (Agreement) on and have agreed to the terms reiterated therein. It is thus clear that the details of the agreement alleged to have been entered into between the Petitioners and other co-owners and MIDC is not mentioned in the said award. The award is rendered under Section 33(2) read with Section 36(1) of the MID Act.

10. The MIDC has taken a stand in the affidavit in reply that, the objections filed by the Petitioners in respect of the writ property were rejected by the State Government vide letter dated 2nd August, 2004 and the same land was released from the acquisition process. In paragraph 9 (d) of the said affidavit in reply, it is stated that the

notices were issued under Section 33(2) of the MID Act on the land owners and the meeting was held on 12th August, 2004 and 19th August, 2004 for deciding the rate of compensation. After discussion with the concerned land holders, the compensation was finalized at the rate of Rs.17.50 lakhs per hectares. According to the said notices, the agreements were executed with the concerned land owners as per Section 33(2) of the MID Act. The agreement with the Petitioner no.1 in respect of the subject land admeasuring 0.23 R along with the structures thereon was executed on 27th November, 2004. In paragraph 9 (f), it is stated that the Respondent No.3 passed an award under Section 33(2) read with Section 36(1) of the MID Act on 31st January, 2005 and declared the compensation.

11. On perusal of the agreement produced for consideration of this Court by the learned Additional Government Pleader though indicates that the said agreement was entered into on 27th November, 2004 i.e. after those meetings came to be held the land bearing Survey No.150/3 was deleted from the said agreement and for other four plots, compensation was agreed by and between the parties as already described in the said agreement. We are thus not inclined to accept the submission made by the learned counsel for MIDC as well as the Additional Government Pleader that the writ property bearing Survey No.150/3 was the subject matter of the said agreement.

Section 32 of the MID Act provides for compulsory acquisition. Undoubtedly, the notice under Section 32 (2) of the MID Act was issued to the owners to show cause as to why the land should not be acquired. The notification was also issued under Section 32(1) of the MID Act specifying particular purpose for which the said land was acquired and stating therein that, the State Government had decided to acquire the land in pursuance of the said Section.

12. Section 33(2) of the MID Act provides that where the amount of compensation has been determined by the agreement between the State Government and the person to be compensated, it shall be determined in accordance with such agreement. It is clear that the impugned award has been made on the premise that there was an agreement between the State Government and the person to be compensated. The award was accordingly made under Section 33(2) read with Section 36 of the MID Act.

13. Since the copy of the agreement produced for perusal of this Court by the Respondents clearly indicates that the writ property was excluded from the payment of compensation of the agreement. In our view, since there was no agreement between the parties for the writ property, the mandatory procedure required under Section 33(3) of the MID Act was to be followed by the State Government for determining the compensation. If the compensation would have

exceeded the amount as the State Government may by general order specify, to be paid for such acquisition shall be determined by the Collector prior to any approval required under Section 33 (3) of the MID Act. Admittedly, the award is not made under Section 33(3) of the MID Act though there was no agreement for payment of compensation under Section 33(2) read with 33(3) of the MID Act.

14. It is not the case of the State Government or MIDC that the impugned award has been declared under Section 33(3) of the MID Act considering the compensation to be determined under Section 33(3) of the MID Act. In our view, the compensation thus determined in respect of the writ property is improper on the premise that, there was an agreement between the parties, and is thus illegal and contrary to Section 33(3) of the MID Act. The impugned award annexed at Exhibit "E" dated 31st January, 2005 is quashed and set aside. The Special Land Acquisition Officer or the Competent Authority as the case may be is directed to determine the compensation in respect of the writ property under Section 33(3) of the MID Act within a period of three months from today. Upon receipt of such award, the Special Land Acquisition Officer or the Competent Authority, as the case may be, shall serve a copy thereof upon the Petitioners within two weeks from the date of communication of such award. The rights and remedies of the Petitioners, if any, upon receipt

of the award are kept open.

15. The certified copy of the agreement is taken on record. It is made clear that by this order we have not set aside the acquisition proceedings in respect of the writ property and the same attained finality.

16. The above writ petitions are allowed in aforesaid terms. Rule is made absolute accordingly. The Petitioners would be at liberty to agitate the issue of relevant date for the purpose of computation of compensation before the Competent Authority. The objections that would be raised by the Petitioners, if any, to be decided on merits and in accordance with law.

17. The Interim Application, pending if any, stands disposed of.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)